

HOUSE BILL 3186
By West

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13, relative to firearms and other weapons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1315, is amended by deleting such section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding Sections 3 through 11 of this act as new sections thereto.

SECTION 3. (a) Any resident of Tennessee who has reached the age of majority may apply to the department of safety for a firearms carry permit. If the applicant is not prohibited from owning a firearm in this state or under federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant.

(b) The application for a permit shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, only the following information concerning the applicant:

- (1) full legal name and any aliases;
- (2) addresses for the last five (5) years;
- (3) date of birth;
- (4) social security number;
- (5) physical description (height, weight, race, sex, hair color and eye color);

(6) whether the applicant has been convicted of a criminal offense punishable for a term exceeding one (1) year;

(7) whether the applicant is currently under indictment or information of any criminal charge punishable for a term exceeding one (1) year;

(8) whether the applicant is currently subject to any order of protection and, if so, the applicant shall provide a copy of such order;

(9) whether the applicant is a fugitive from justice;

(10) whether the applicant is addicted or has been addicted to alcohol, drugs, or controlled substances;

(11) whether the applicant has ever been hospitalized because of mental illness or alcohol or drug problems; and

(12) whether the applicant has ever been adjudicated mentally ill and/or had a conservator appointed by a court for his or her benefit.

(c) In addition to the information required under subsection (b), the department may also require the applicant to provide three (3) sets of classifiable fingerprints for the sole purpose of conducting the background check as authorized by this section and one (1) or more photographs of the applicant's head and shoulders suitable for use on the permit.

(d) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.

(e) Prior to the issuance of a permit, the department may conduct a reasonable background investigation regarding the applicant. The background investigation shall be limited to those matters which this section requires the applicant to disclose, whether the applicant meets the handgun ownership requirements, whether the applicant has failed to disclose specific facts which are required to be disclosed, whether the applicant has a history of psychological instability and/or whether the applicant, if issued a permit, would pose a risk of harm to the public.

(f) Upon receipt of an application, the department shall notify the chief law enforcement officer of the applicant's county of residence that the applicant has requested a permit. The chief law enforcement officer may, at his discretion, submit a report to the department containing any readily discoverable information that such officer feels may be pertinent to the applicant regarding those matters enumerated under subsection (b). The chief law enforcement officer shall file such report with the department within ten (10) days after the date such officer receives a copy of the application. If the chief law enforcement officer chooses, such officer may notify the department in writing that he does not wish to thereafter receive copies of applications.

(g) The department may deny a permit if the department determines that the applicant has not accurately disclosed any material information required to be disclosed by the applicant, that the applicant fails to meet the requirements of this section, or that the applicant, because of mental illness, alcohol or drug problems, or physical infirmity, poses a material likelihood of risk of harm to the public. The following shall not be grounds to deny a permit:

- (1) The existence of any arrest or other records for any indictment, charge or warrant which has been judicially or administratively expunged;
- (2) A conviction for which the applicant has received a pardon;
- (3) A conviction which has been judicially expunged or otherwise set aside;
- (4) A charge or conviction for which the applicant's civil rights have been restored pursuant to Title 40, Chapter 29;
- (5) A history reflecting that the applicant was addicted to alcohol, drugs or any controlled substances if the applicant can demonstrate that it has been more than five (5) years since he or she was last so addicted;
- (6) A conviction for any non-violent crime if it has been more than five (5) years since the applicant successfully completed the provisions of any imposed sentence, probation and restitution imposed for such offense; or

(7) Any prior denial, suspension or revocation of a firearms carry permit by this or any other state if it has been more than five (5) years since such denial, suspension or revocation.

(h) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall be marked confidential and personal and shall state the specific factual basis for the denial. It shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department and shall notify the applicant that the applicant has a right to request an administrative hearing pursuant to Title 4, Chapter 5, or to bring a mandamus action to challenge such denial.

(i) The department shall issue a permit to an applicant not otherwise prohibited from obtaining a permit under this section no later than thirty (30) days after the application is received by the department. The department may issue a temporary permit for a period not to exceed thirty (30) days to any applicant whom the department believes is in an emergency situation that may constitute a risk of safety to the person or the person's family. The temporary permit may not be renewed and may be revoked without a hearing.

(j) A permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any firearm(s) which the permit holder legally owns or possesses.

(k) The permit shall be issued on a wallet-sized laminated card of the same appropriate size used by the state of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(1) The permit holder's name, address, date of birth and social security number;

(2) A description of the permit holder by sex, height, weight and eye color;

(3) A color photograph of the permit holder;

(4) A right thumb print, or if none, another suitable single fingerprint, of the permit holder; and

(5) The permit number and expiration date.

(l) The department shall charge an application and processing fee which shall not exceed the amount reasonably necessary to carry out the requirements of this section or fifty dollars (\$50.00), whichever is less. Such fee shall cover all aspects of processing the application and issuing the permit including, but not limited to, the costs of any background investigation, and any fingerprinting and/or photography provided by the department.

(m) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(n) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of a permit by submitting, under oath, a renewal application with a renewal fee of twenty dollars (\$20.00). The renewal application shall be on a standard form developed by the department of safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (b) and shall require the applicant to certify that such applicant still satisfies all the requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit, provided that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

SECTION 4. (a) The department is hereby authorized to suspend or revoke a firearms permit upon a showing by its records or other sufficient evidence that the permittee:

- (1) Has not accurately disclosed any material information required by Section 3 of this act;
- (2) Poses a material likelihood of risk of harm to the public;
- (3) Has been convicted of a felony; or
- (4) Has violated any other provision of this act.

(b) Upon the suspension or revocation of a permit, the permittee must surrender such permit to the department.

(c)(1) The department, upon suspending or revoking a permit, shall require that such permit be surrendered to and be retained by the department. Prior to the reissuance of a suspended permit, the department may require the permittee to submit evidence that the permittee has completed a program of alcohol or drug abuse education, or has completed treatment by a physician, board certified or eligible in psychiatry, or a licensed psychologist certified with competence in clinical psychology; or at a facility licensed by the department of mental health and mental retardation to provide such treatment. Certification of the psychiatrist or clinical psychologist or facility licensed by the department of mental health and mental retardation under this section is not to be construed as a prediction of future behavior but merely certification of completion of the program. The department may not require a permittee to submit such evidence unless such evidence is relevant to the grounds for the suspension or revocation of such permit.

(2) When such examination, as required by this subsection, is administered by a state supported mental health facility, such facility and medical doctors or doctors of psychology employed by such facility who administer such examinations within the course and scope of such doctor's authority under the statute, shall be immune from tort liability for the proper dissemination of any report or findings to the department of safety which results from such examination; provided, that this immunity shall not extend to any other person, institution, or other member of the private sector, not employed or attached to a state supported mental health facility.

(d) The applicant shall have a right to request an administrative hearing pursuant to Title 4, Chapter 5, or to bring a mandamus action to challenge such suspension or revocation of a permit.

SECTION 5. (a) Any person who has received a notice of suspension or revocation may make a written request for a review of the department's determination by the department at a

hearing. The request shall be made on a form available from the department. If the person's permit has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the permit suspension or revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within thirty (30) days of the filing of the request for a hearing. The hearing shall be held at a place designated by the department, unless the parties agree to a different location. The department shall provide written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have the authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive relevant evidence;
- (4) Issue subpoenas, take depositions, or cause depositions to interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person has violated any provision of this act. If the presiding hearing officer finds the affirmative of this issue, the suspension or revocation order shall be sustained. If the presiding hearing officer finds the negative of this issue, the suspension or revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

SECTION 6. (a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 5 of this act, a person aggrieved by the determination shall have the right to file a petition in the chancery court of the county of the person's residence for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

SECTION 7. The Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, applies to the extent it is consistent with the proceedings under Sections 5 and 6 of this act relating to administrative hearing and judicial review.

SECTION 8. The department shall issue a duplicate permit to a permit holder upon the payment by the permit holder of a fee of five dollars (\$5.00).

SECTION 9. Within sixty (60) days of any change in a permit holder's principal place of residence, the permit holder shall notify the department in writing of such permit holder's new address.

SECTION 10. (a) All permits issued on or after October 1, 1994, pursuant to the former provisions of this section shall continue to be valid under this act. At the request of a permit holder, new identification cards pursuant to this act shall be issued. All such permits shall

expire four (4) years from the date of issuance unless revoked or suspended pursuant to the provisions of this act.

(b) Within thirty (30) days of the effective date of this act, the sheriff and/or chief law enforcement officer of each county shall prepare and deliver to the department a list containing the identity of each person to whom a permit was issued since October 1, 1994, their address, date of birth, social security number, the date of issuance of the permit and, if applicable, the permit number. Within forty-five (45) days from the effective date of this act, the sheriff and/or chief law enforcement officer of each county shall destroy all applications and files related to the approval or denial of any application submitted from October 1, 1994, to the effective date of this act.

(c) A violation of this act is a Class B misdemeanor punishable only by a fine not to exceed five hundred dollars (\$500).

(d) Any party aggrieved under the terms of this act by the denial, suspension and/or revocation of a permit, or otherwise, may file a writ of mandamus, as provided by law. Such action shall also allow the recovery of any actual damages sustained by the party. The aggrieved party, if prevailing in action, shall also be entitled to recover those costs and attorney's fees reasonably incurred or relating to such action.

(e) Nothing contained in this section shall be construed to alter, reduce or eliminate any personal civil or criminal liability that an applicant may have for the intentional or negligent use of a firearm.

SECTION 11. Any resident who has a firearms permit from another state which accepts permits obtained in Tennessee, and which has standards substantially equal to those in Tennessee, shall be issued a permit in this state upon payment of all applicable fees.

SECTION 12. Tennessee Code Annotated, Section 39-17-1307(a), is amended by deleting subdivision (1) and substituting instead the following:

(1) A person commits an offense who carries with criminal intent a firearm, knife with a blade length exceeding four inches (4"), or club.

SECTION 13. Tennessee Code Annotated, Section 39-17-1309(e), is amended by adding a new subdivision (7), as follows:

(7) By a person authorized to possess or carry a firearm pursuant to Section 3 of this act;

SECTION 14. Tennessee Code Annotated, Section 39-17-1311(b), is amended by adding a new subdivision (8), as follows:

(8) By a person authorized to possess or carry a firearm pursuant to Section 3 of this act;

SECTION 15. Tennessee Code Annotated, Section 39-17-1316(a)(1), is amended by deleting the words “of the illegal sale of alcoholic beverages” and by substituting instead the words “of the sale of illegal alcoholic beverages”.

SECTION 16. Tennessee Code Annotated, Section 39-17-1321, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Notwithstanding whether a person has a permit issued pursuant to Section 3 of this act, it is an offense for a person, while in the public domain, to possess a firearm while under the influence of alcohol or illegally under the influence of any controlled substance. For purposes of this section, the term “under the influence of alcohol” shall mean that the person’s blood alcohol content, at the time alleged, was greater than or equal to eight hundredths of one percent (.08%) by weight of alcohol in the person’s blood.

SECTION 17. Tennessee Code Annotated, Section 39-17-1322, is amended by adding at the end thereof:

A person whose possession or use of a firearm is protected from criminal prosecution under this section shall not thereafter be denied a permit because of such unpermitted possession or use.

SECTION 18. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following as a new section:

Any license or permit issued by the federal government or any other state shall be recognized pursuant to the terms thereof but only if the holder thereof is not a resident of Tennessee. Any person moving into Tennessee who has a valid firearms carry permit from another state shall have a one hundred twenty (120) day grace period from the date such person moves into this state to obtain a firearms carry permit from this state.

SECTION 19. Tennessee Code Annotated, Section 39-17-1316(c)(1), is amended by deleting such subdivision and by substituting instead the following:

(c)(1) The fifteen (15) day waiting period does not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, licensed collectors, or firearms carry permit holders who meet the requirements of subsection (b) and certify prior to the transaction the applicable legal status of both parties. The burden shall fall upon the transferor to determine the legality of the transaction in progress.

SECTION 20. Tennessee Code Annotated, Section 39-17-1305(a), is amended by deleting the language "or in the confines of a building where alcoholic beverages are sold".

SECTION 21. This act shall take effect October 1, 1996, the public welfare requiring it.

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